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Emergency Essentials, LLC.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

EMERGENCY ESSENTIALS, LLC., a
Delaware limited liability company,

Plaintiff,

vs.

AMAZON.COM, INC., a Delaware
corporation,

Defendant.

**COMPLAINT AND
JURY DEMAND**

Case No. _____

Judge _____

Plaintiff Emergency Essentials, LLC., complains against Defendant Amazon.com, Inc. as follows:

PARTIES

1. Plaintiff, Emergency Essentials, LLC. (“Emergency Essentials”) is a Delaware limited liability company having a principal place of business in Orem, Utah.

2. Defendant, Amazon.com, Inc. (“Amazon”) is a Delaware Corporation having its registered principal executive offices in Seattle, Washington.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this claim pursuant to the Lanham Act, 15 U.S.C. §1051 *et seq.* The Court has jurisdiction pursuant to 28 U.S.C. § 1338 and jurisdiction over the state claims pursuant to 28 U.S.C. § 1367.

4. Venue is proper in this district under 28 U.S.C. §1391(b and d), pursuant to the Lanham Act and because the actions herein alleged took place within this jurisdiction and/or because Defendant has sufficient contacts within the state to subject it to personal jurisdiction in this District. A substantial part of the property affected by this lawsuit is located within Utah and Defendant has conducted sales with Utah residents and businesses.

GENERAL ALLEGATIONS

5. Plaintiff Emergency Essentials is a company which specializes in selling food storage and other preparedness supplies. Emergency Essentials and its predecessor in interest, Emergency Essentials, Inc., have been selling preparedness supplies throughout the United States for more than 25 years.

6. Emergency Essentials is one of the leading producers and retailers of preparedness supplies.

7. Emergency Essentials sells its products through multiple channels including, retail stores, on the Internet and on Amazon.com.

8. Emergency Essentials and its predecessor, Emergency Essentials, Inc., have spent substantial amounts of time and money in developing goodwill in the EMERGENCY ESSENTIALS marks.

9. Emergency Essentials is the owner of a large number of U.S. Trademark and Service Mark Registrations for EMERGENCY ESSENTIALS.

10. Emergency Essentials is the owner of U.S. Registration No. 3,571,175 (“the ‘175 Registration”) for the EMERGENCY ESSENTIALS service mark covering “[r]etail store services featuring, disaster preparedness supplies in the nature of blankets, dehydrated and freeze dried food, food preparation equipment, namely, fuel based ovens, cookers, mills, grinders, canners, steamers, dehydrators, juicers, peelers, corers, food processors, blenders and mixers.” The Certificate of Registration for this mark is attached as Exhibit A. The ‘175 Registration is incontestable.

11. Emergency Essentials is the owner of U.S. Registration No. 3,571,176 (“the ‘176 Registration”) for the EMERGENCY ESSENTIALS trademark covering “[b]ackpacks; small and large day packs.” The Certificate of Registration for this mark is attached as Exhibit B. The ‘176 Registration is incontestable.

12. Emergency Essentials is the owner of U.S. Registration No. 3,571,173 (“the ‘173 Registration”) for the EMERGENCY ESSENTIALS trademark covering “tents.” The Certificate of Registration for this mark is attached as Exhibit C. The ‘173 Registration is incontestable.

13. Emergency Essentials is the owner of U.S. Registration No. 3,439,473 (“the ‘473 Registration”) for the EMERGENCY ESSENTIALS trademark covering “[b]lankets, namely, blankets stored in compact form ready for emergency use and hooded blankets.” The Certificate of Registration for this mark is attached as Exhibit D. The ‘473 Registration is incontestable.

14. Emergency Essentials is the owner of U.S. Registration No. 3,906,099 (“the ‘099 Registration”) for the EMERGENCY ESSENTIALS trademark covering “personal hygiene kits comprising soap, toothpaste, and toothbrushes,” “[f]irst aid kits comprised of sterile medical gauze dressings, pain relievers, namely, aspirin, burn relief medication, splints, bandages for dressings, medical adhesive tape, antibiotic ointment, sanitary masks, plastic gloves, therapeutic ice packs, shears, therapeutic hot therapy packs, elastic bandages; compact high calorie food bars for use as a dietary supplement; powdered nutritional supplements; hand-sanitizing preparations,” and “[s]urgical kits comprised of scalpel, medical lancing device, hemostats, sutures, penlight, tweezers, sanitary wipes and dental picks.” The Certificate of Registration for this mark is attached as Exhibit E.

15. Emergency Essentials is the owner of U.S. Registration No. 3,571,177 (“the ‘177 Registration”) for the EMERGENCY ESSENTIALS trademark covering “[n]on-electric pocket warmers, namely, chemically-activated heating packets for warming hands (not for medical

purposes); non-electric foot warmers, namely, chemically-activated heating packets for warming feet (not for medical purposes); flashlights; rechargeable flashlights; water filters for use with bottles; food preparation equipment, namely, fuel based ovens, portable propane or gas cookers, electric food steamers, electric dehydrators; portable folding stoves; chemically-activated stick lights; kerosene and propane lanterns.” The Certificate of Registration for this mark is attached as Exhibit F. The ‘177 Registration is incontestable.

16. Emergency Essentials is the owner of U.S. Registration No. 3,582,152 (“the ‘152 Registration”) for the EMERGENCY ESSENTIALS trademark covering “[c]andles, namely, slow burning candles.” The Certificate of Registration for this mark is attached as Exhibit G.

17. Emergency Essentials is the owner of U.S. Registration No. 3,571,178 (“the ‘178 Registration”) for the EMERGENCY ESSENTIALS trademark covering “[s]leeping bags and sleeping bag liners; plastic drums used for water storage.” The Certificate of Registration for this mark is attached as Exhibit H. The ‘178 Registration is incontestable.

18. Emergency Essentials is the owner of U.S. Registration No. 3,568,952 (“the ‘952 Registration”) for the EMERGENCY ESSENTIALS trademark covering “[h]ousehold containers for food; plastic containers and lids to store food items; plastic bottles sold empty; containers for water storage consisting of polycarbonate bottles sold empty, plastic jugs for beverages sold empty; pepper mills; cookware, namely, steamers; non-electric juicers.” The Certificate of Registration for this mark is attached as Exhibit I. The ‘952 Registration is incontestable.

19. Emergency Essentials is the owner of U.S. Registration No. 3,665,475 (“the ‘475 Registration”) for the EMERGENCY ESSENTIALS trademark covering “[w]ater purification

chemicals for potable water treatment.” The Certificate of Registration for this mark is attached as Exhibit J.

20. Emergency Essentials is the owner of U.S. Registration No. 3,571,172 (“the ‘172 Registration”) for the EMERGENCY ESSENTIALS trademark covering “[n]on-electric fruit and vegetable peelers, hand operated juicers, hand operated corers, hand operated food processors.” The Certificate of Registration for this mark is attached as Exhibit K. The ‘172 Registration is incontestable.

21. Emergency Essentials is the owner of U.S. Registration No. 3,582,153 (“the ‘153 Registration”) for the EMERGENCY ESSENTIALS trademark covering “[e]lectric vegetable peelers; electric juicers; hand held power grinders; electric food processors; electric food blenders; electric mixers for household purposes.” The Certificate of Registration for this mark is attached as Exhibit L.

22. Emergency Essentials is the owner of U.S. Registration No. 3,659,764 (“the ‘764 Registration”) for the EMERGENCY ESSENTIALS trademark covering “[d]ehydrated food products for rehydration and consumption, namely, packaged meals comprised primarily of dehydrated meats and vegetables and dairy products other than ice cream, ice milk and frozen yogurt; prepared dried food kits comprised primarily of freeze dried fruits, freeze dried vegetables, freeze dried meats, freeze dried poultries and cheeses; packaged dairy items, namely, eggs, buttermilk powder, butter powder, cheese blend, freeze dried whole eggs, freeze dried scrambled eggs, freeze dried egg whites, margarine powder, sour cream powder, and powdered milk; packaged processed fruits, namely, applesauce, apple peach flakes, apple strawberry flakes,

apple and banana slices; apple chips; packaged legumes, namely, black beans, kidney beans, lentils, pinto beans, small red chili beans, small white navy beans, soy beans, peanut butter powder, and split green peas; packaged soup mixes, namely, ABC soup mix, creamy broccoli cheese soup, creamy potato soup, creamy soup base and mixed vegetable stew blend; packaged processed fruits, namely, freeze dried strawberries, freeze dried whole blueberries, freeze dried peaches, freeze-dried apricots, freeze dried bananas, freeze dried apples, freeze dried blackberries, freeze-dried raisins, freeze dried oranges, freeze dried pineapples, and freeze dried mangos; Peanut Butter; Beef broth; Chicken broth; Shortening powder.” The Certificate of Registration for this mark is attached as Exhibit M.

23. Emergency Essentials is the owner of U.S. Registration No. 3,759,697 (“the ‘697 Registration”) for the EMERGENCY ESSENTIALS trademark covering “[d]ehydrated cereals; ingredients required for cooking and baking, namely, cocoa mix, baking powder, baking soda, corn starch for food, beef gravy mix, chicken gravy mix, salt, brown sugar, powdered sugar and white sugar; packaged desserts, namely, chocolate fudge brownie mix, creamy hot chocolate, chocolate and vanilla pudding, instant pudding mix, freeze dried crumble, freeze dried cheesecake, crackers, almond poppy seed cake, marble pound cake, spice pound cake, stuffed french toast, freeze dried ice cream; processed grains, namely, cornmeal, white flour, popcorn, white rice, processed red wheat and processed white wheat; pastas, namely, egg noodles, elbow macaroni; spices and seasonings, namely, onion powder, taco seasoning, minced garlic, cinnamon, basil leaves, black pepper, spaghetti seasoning, Italian seasoning, oregano, enchilada seasoning, garlic salt, cinnamon sugar, herb seasoning, lemon dill seasoning, steak seasoning,

onion salt, lemon pepper, garlic pepper, ground allspice.” The Certificate of Registration for this mark is attached as Exhibit N.

24. Emergency Essentials is the owner of U.S. Registration No. 3,571,179 (“the ‘179 Registration”) for the EMERGENCY ESSENTIALS trademark covering “[c]lothing, namely, sweaters, sweatshirts, ponchos and hooded ponchos.” The Certificate of Registration for this mark is attached as Exhibit O. The ‘179 Registration is incontestable.

25. Emergency Essentials is the owner of U.S. Registration No. 3,571,174 (the ‘174 Registration”) for the EMERGENCY ESSENTIALS trademark covering “[d]rinking water packaged in pouches for long term storage; powdered fruit drink mixes, namely, powdered apple juice, orange juice and peach juice mix.” The Certificate of Registration for this mark is attached as Exhibit P. The ‘174 Registration is incontestable.

26. Emergency Essentials is the owner of U.S. Registration No. 3,568,951 (“the ‘951 Registration”) for the EMERGENCY ESSENTIALS trademark covering “[e]ducational books and publications, namely, booklets and pamphlets featuring the subject matter of survival skills and necessary equipment, first aid, 72 hour preparedness guidelines for emergencies; general purpose plastic bags.” The Certificate of Registration for this mark is attached as Exhibit Q.

27. Emergency Essentials is the owner of U.S. Registration No. 3,574,562 (“the ‘562 Registration”) for the EMERGENCY ESSENTIALS trademark covering “[c]omputer programs, namely, computer programs that assist the individual in planning and preparing for natural and man made emergencies such as floods, fire, earthquakes, hurricanes, tornadoes and the like, by providing useful information and tips; pre-recorded video recordings on the topics of

preparedness and survival; automotive preparedness road kit consisting of jumper cables, flashlight, batteries, candles, first aid kit, first aid guide book, multifunction utility knife, water rations, and sleeping bags sold as a unit; helmet safety lights.” The Certificate of Registration for this mark is attached as Exhibit R. The ‘562 Registration is incontestable.

28. Emergency Essentials has developed substantial and valuable goodwill in its EMERGENCY ESSENTIALS trademarks through advertising, industry recognition, and a history of providing high quality products under the mark. As a result, Emergency Essentials has developed widespread recognition and secondary meaning in its EMERGENCY ESSENTIALS trademarks throughout the United States, all of which has inured and continues to inure to Emergency Essentials substantial benefit.

29. Amazon has been put on notice on 2 occasions regarding their use of the EMERGENCY ESSENTIALS marks.

30. Amazon used the EMERGENCY ESSENTIALS mark in August 2010.

31. Emergency Essentials sent Amazon a cease and desist letter in August 2010 and Amazon ceased using the EMERGENCY ESSENTIALS mark. The August 2010 cease and desist letter is attached as Exhibit S.

32. Thereafter Emergency Essentials checked and found that Amazon had ceased using the EMERGENCY ESSENTIALS marks.

33. Emergency Essentials discovered that Amazon was again using the EMERGENCY ESSENTIALS marks in September 2013. A screenshot of Amazon.com from September 12, 2013 is attached as Exhibit T.

34. Emergency Essentials sent Amazon a cease and desist letter in September 2013. A copy of the September 2010 cease and desist letter is attached as Exhibit U.

35. Amazon has failed to honor Emergency Essentials cease and desist request. To the contrary, Amazon.com has increased its use of the EMERGENCY ESSENTIALS mark. A copy of Amazon.com's add is attached at Exhibit V.

36. Amazon's use of the EMERGENCY ESSENTIALS trademark in interstate commerce in association with the advertising and sale of emergency preparedness supplies constitutes infringement of Emergency Essentials' rights in the marks, developed through Emergency Essentials' use of the marks in interstate commerce in association with the sale of emergency preparedness supplies, and their U.S. trademark and service mark registrations. Screenshots of Amazon using the EMERGENCY ESSENTIALS mark to sell emergency preparedness supplies in February 2014 is attached as Exhibit W.

37. Moreover, if one enters the EMERGENCY ESSENTIALS mark as a search term on Amazon.com, the search results mix products sold by Emergency Essentials with products sold by Emergency Essentials' competitors. A screenshot of a search on the term EMERGENCY ESSENTIALS is attached hereto as Exhibit X.

38. On information and belief, the only purpose for placing the EMERGENCY ESSENTIALS mark on Amazon's website was to mislead the public into believing that the website was being sponsored or was affiliated with Emergency Essentials and to direct traffic away from Emergency Essentials legitimate website and toward the websites of Emergency Essentials' competitors.

FIRST CLAIM FOR RELIEF

(Trademark Infringement under the Lanham Act, 15 U.S.C. § 1114)

39. Emergency Essentials incorporates and re-alleges the contents of the preceding paragraphs of this Complaint as though fully set forth herein, and further alleges:

40. Emergency Essentials owns U.S. registered trademarks for the mark EMERGENCY ESSENTIALS, including Registration Nos.: 3,571,175; 3,571,176; 3,571,173; 3,439,473; 3,906,099; 3,571,177; 3,582,152; 3,571,178; 3,568,952; 3,665,475; 3,571,172; 3,582,153; 3,659,764; 3,759,697; 3,571,179; 3,571,174; 3,568,951; and 3,574,562.

41. Defendant, without authorization, used the registered marks EMERGENCY ESSENTIALS in commerce in connection with the sale, offer for sale, distribution, and advertisement of goods which compete with the goods sold by Emergency Essentials under the EMERGENCY ESSENTIALS marks.

42. Defendant's unauthorized use of the registered EMERGENCY ESSENTIALS marks is likely to cause confusion, mistake, or to deceive the public as to the source of goods and services.

43. Defendant's use of the EMERGENCY ESSENTIALS marks has been willful and in deliberate disregard for Emergency Essentials' rights in its marks.

44. By reason of the foregoing, Emergency Essentials asserts a claim against Defendant for injunctive relief and monetary damages for trademark infringement pursuant to 15 U.S.C. § 1114.

SECOND CLAIM FOR RELIEF

(Unfair Competition under the Lanham Act, 15 U.S.C. §1125(a))

45. Emergency Essentials incorporates and re-alleges the contents of the preceding paragraphs of this Complaint, as though fully set forth herein, and further alleges:

46. Emergency Essentials is well known for its preparedness products.

47. Emergency Essentials markets its products under the EMERGENCY ESSENTIALS marks.

48. The EMERGENCY ESSENTIALS marks have developed considerable goodwill among consumers.

49. Defendant misrepresented to the public that their website was affiliated with or sponsored by Emergency Essentials by using the EMERGENCY ESSENTIALS marks on their website.

50. Defendant then directed users of the website to Emergency Essentials' competitors.

51. Defendant's actions created a likelihood of confusion among the public as to the affiliation or sponsorship of the goods sold on the Defendant's website with Emergency Essentials.

52. Defendant used the EMERGENCY ESSENTIALS marks with the specific purpose of misleading the public into believing that Emergency Essentials was affiliated, connected, or associated with their website.

53. By reason of the foregoing, Emergency Essentials asserts a claim against Defendant for injunctive relief and monetary damages for unfair competition pursuant to 15 U.S.C. § 1125(a).

54. By reason of the foregoing, Emergency Essentials asserts that the present case is exceptional and entitles Emergency Essentials to treble damages and attorneys' fees.

THIRD CLAIM FOR RELIEF

(Unfair Competition under the Utah Unfair Competition Act, Utah Code Ann. § 13-5(a)-101, et seq.)

55. Emergency Essentials incorporates and re-alleges the contents of the preceding paragraphs of this Complaint, as if the same were fully set forth herein, and further alleges:

56. Defendant's actions constitute an intentional business act and practice that is unlawful, unfair, and fraudulent, and has led to a material diminution in value of Emergency Essentials' intellectual property.

57. Defendant's actions constitute an infringement of Emergency Essentials' trademarks. Defendant's tortuous actions have caused, and unless enjoined by this Court will cause in the future, irreparable damage, loss, and injury to Emergency Essentials for which Emergency Essentials has no adequate remedy at law.

58. Pursuant to Utah Code Ann. § 13-5(a)-103, Emergency Essentials is entitled to actual damages, costs and attorney fees, and punitive damages.

59. By reason of the foregoing, Emergency Essentials asserts a claim against the Defendant for violation of the Utah Unfair Competition Act.

FOURTH CLAIM FOR RELIEF

(Deceptive Trade Practice under the Utah Truth in Advertising Act, Utah Code Ann. § 13-11(a)-3, *et seq.*)

60. Emergency Essentials incorporates and re-alleges the contents of the preceding paragraphs of this Complaint, as though fully set forth herein, and further alleges:

61. Defendant, in the course of their business, caused a likelihood of confusion or misunderstanding as to the source, sponsorship, approval, affiliation, connection, association or certification of goods linked to the website amazon.com.

62. Pursuant to Utah Code Ann. § 13-11(a)-4, Emergency Essentials is entitled to recover 3 times the amount of actual damages sustained, or \$2,000, whichever is greater, plus court costs. Emergency Essentials is also entitled to injunctive relief under Utah Code Ann. § 13-11(a)-4, attorneys' fees, and an order to cause Defendant to promulgate corrective advertising.

63. By reason of the foregoing, Emergency Essentials asserts a claim against the Defendant for violation of the Utah Truth in Advertising Act.

FIFTH CLAIM FOR RELIEF

(Unjust Enrichment)

64. Emergency Essentials incorporates and re-alleges the contents the preceding paragraphs of this Complaint, as though fully set forth herein, and further alleges:

65. Emergency Essentials has expended considerable time and resources developing and promoting its EMERGENCY ESSENTIALS marks.

66. Defendant was aware of the benefit of using the EMERGENCY ESSENTIALS marks and sought to appropriate the time and resources expended by Emergency Essentials without the authorization or consent of Emergency Essentials.

67. By using the EMERGENCY ESSENTIALS trademarks without compensation to Emergency Essentials, Defendant was unjustly enriched.

68. By reason of the forgoing, Emergency Essentials makes a claim against Defendant for Unjust Enrichment.

PRAYER FOR RELIEF

WHEREFORE, Emergency Essentials prays for judgment against the Defendant as follows:

A. Enjoin Defendant from making, hosting or distributing websites that include the EMERGENCY ESSENTIALS trademarks in the use of sales not associated with Emergency Essentials goods and without authorization from Emergency Essentials;

B. Enjoin Defendant from infringing Emergency Essentials' trademarks directly or contributorily;

C. Order Defendant to prepare an accounting of all proceeds generated by their development and use of the mark;

D. Order Defendant to conduct corrective advertising to advise the public that competing goods of Emergency Essentials sold on Amazon that were advertised under the EMERGENCY ESSENTIALS mark are not affiliated, connected or associated with Emergency Essentials.

E. Award Emergency Essentials its damages and/or any profits of Defendant and its costs of the action pursuant to 15 U.S.C. § 1117(a).

F. Award Emergency Essentials treble its damages and/or Defendant's profits pursuant to 15 U.S.C. § 1117(b);

G. Find that this is an exceptional case and awarding Emergency Essentials' attorneys' fees pursuant to 15 U.S.C. § 1117(a);

H. Award Emergency Essentials treble damages or an amount not less than \$2,000 for violation of the Utah Truth in Advertising Act, Utah Code Ann. §13-11(a)-4.

I. Award injunctive relief, court costs, and attorneys' fees pursuant to the Utah Truth in Advertising Act, Utah Code Ann. §13-11(a)-4.

J. Award Emergency Essentials actual damages for violation of the Utah Unfair Competition Act, Utah Code Ann. §13-5(a)-103.

K. Award Emergency Essentials costs and attorneys' fees pursuant to the Utah Unfair Competition Act, Utah Code Ann. §13-5(a)-103;

L. Award Emergency Essentials punitive damages pursuant to the Utah Unfair Competition Act, Utah Code Ann. §13-5(a)-103;

M. Award Emergency Essentials actual damages for violation of the Registration and Protection of Trademarks and Service Marks Act pursuant to, Utah Code Ann. §70-3a-404.

N. Award Emergency Essentials trebled damages, costs and attorneys' fees pursuant to the Registration and Protection of Trademarks and Service Marks Act pursuant to Utah Code Ann. §70-3a-404.

O. Award Emergency Essentials pre-judgment and post-judgment interest until such awards are paid; and

P. Award such other and further relief as is just and equitable.

Emergency Essentials demands a trial by jury on all matters so triable.

DATED this 4th day of March 2014.

BATEMAN IP LAW GROUP

/s/Randall B. Bateman

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